



# Civil Resolution Tribunal

Date Issued: December 14, 2021

File: ST-2021-000881

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR.1325 v. Mendelsohn*, 2021 BCCRT 1307

**B E T W E E N :**

The Owners, Strata Plan VR.1325

**APPLICANT**

**A N D :**

DANIEL MENDELSON

**RESPONDENT**

**A N D :**

The Owners, Strata Plan VR.1325

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is largely about alterations to a strata lot. The respondent, Daniel Mendelsohn, is 1 of 2 registered owners of a strata lot in the applicant strata corporation, The Owners, Strata Plan VR.1325 (strata).
2. The strata says Mr. Mendelsohn's shower niche and south-facing deck door are impermissible. It seeks declarations that they breach the strata's bylaws and the *Strata Property Act* (SPA). For the door, the strata seeks further orders that Mr. Mendelsohn 1) install muntin bars on it, 2) hire an architect to inspect the work, and 3) pay outstanding fines for the door. For the shower niche, the strata seeks orders that Mr. Mendelsohn 1) remove the niche, 2) improve the fireproofing, soundproofing, and the structural strength of the affected wall, 3) hire an architect to inspect and report on the work, 3) allow the strata to inspect the work and other areas in the strata lot, and 4) pay outstanding fines for the niche. The strata also made claims about a hot tub that for reasons discussed below are now resolved.
3. Mr. Mendelsohn disagrees and says the strata granted him written permission for the door. He also says the shower niche does not breach any bylaws or the SPA.
4. Mr. Mendelsohn counterclaims against the strata for reimbursement of \$300 in bylaw fines for noise and hot tub infractions. He also say the strata used his strata fees to contribute to legal fees in connection with this dispute. He seeks reimbursement of \$316.93. Finally, he seeks an order for the strata to comply with SPA sections 169 and 171. Those provisions are about owners' contributions to legal costs.
5. The strata says the fines were appropriate. It acknowledges that it wrongly charged Mr. Mendelsohn for legal fees. However, it says no remedy is necessary because it raised additional funds from other owners.
6. A strata council member represents the strata. Mr. Mendelsohn is self-represented.
7. For the reasons that follow, I find that the to be strata largely successful and make the orders set out below.

## **JURISDICTION AND PROCEDURE**

8. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
9. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
10. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
11. Under CRTA section 123, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

### ***The Strata's Claims about the Hot Tub***

12. The strata previously requested 8 remedies under a claim about Mr. Mendelsohn's hot tub. The parties agree that on June 10, 2021, Mr. Mendelsohn removed the hot tub from his strata lot. The strata's representative now submits, "I believe this Claim is now settled". Given this, I make no findings about the strata's hot tub claim. I will discuss the hot tub only to the extent that it is relevant to Mr. Mendelsohn's counterclaims.

## ***The Limitation Period***

13. Mr. Mendelsohn says the strata's claims about the door and shower niche are out of time because the strata discovered them in 2018. The *Limitation Act* applies to disputes before the CRT. Section 6 says the basic limitation period is 2 years from the date a claim is discovered. A limitation period is a time period within which a person may bring a claim. If that period expires, the right to bring the claim ends, even if the claim would have otherwise been successful.
14. The *Limitation Act* defines a claim as a "claim to remedy an injury, loss or damage that occurred as a result of an act or omission". In previous strata property decisions, the CRT has found that the *Limitation Act* does not apply to enforcing bylaw fines. See, for example, *Bright Smile Enterprises Ltd. v. The Owners, Strata Plan LMS 1490*, 2019 BCCRT 752. In another decision, the CRT found the *Limitation Act* did not apply to a claim about reinstalling a balcony railing. See *The Owners, Strata Plan K82 v. Hunchak*, 2020 BCCRT 1164. This was because the CRT found such claims were not about any injury, loss or damage. Other decisions have noted that the strata has an ongoing duty under the SPA and bylaws to repair and maintain common property that does not expire. See *Pickering v. The Owners, Strata Plan VIS4673*, 2021 BCCRT 389. Although CRT decisions are not binding, I agree with the reasoning in these decisions.
15. I find that in this dispute, the strata makes no claims about any injury, loss, or damage. It does not claim for any money spent to remedy the door or shower niche. As discussed below, I also find that the Schedule of Standard Bylaws applies. Bylaw 8 of the Schedule says the strata must maintain and repair the structure and exterior doors of a building. So, I find that the strata has an ongoing duty to repair and maintain the door and the wall affected by the shower niche under bylaw 8. For those 2 reasons, I find the *Limitation Act* does not apply to the strata's door and shower niche claims. So, I find the strata's claims are in time and consider their merits below.

## **ISSUES**

16. The remaining issues in this dispute are as follows:

- a. Did Mr. Mendelsohn breach the SPA or bylaws by installing the new sliding deck door, and if so, what are the appropriate remedies?
- b. Did Mr. Mendelsohn breach the SPA or bylaws by installing the shower niche, and if so, what are the appropriate remedies?
- c. Must the strata reimburse Mr. Mendelsohn \$300 for fines paid?
- d. Must the strata reimburse Mr. Mendelsohn any strata fees?

## **EVIDENCE AND ANALYSIS**

17. In a civil proceeding like this one, the strata and Mr. Mendelsohn must prove their respective claims and counterclaims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.

18. I begin with the background facts. The strata plan shows the strata consists of 5 residential strata lots. Mr. Mendelsohn became 1 of 2 registered owners of strata lot 4 in 2012. The strata's correspondence was directed at both owners and Mr. Mendelsohn responded for both owners, so I find nothing turns on the fact that there are 2 owners. A Land Title Office search shows the strata registered only 1 bylaw on March 31, 2020. It generally prohibits smoking. Given this, I find the SPA's Schedule of Standard Bylaws applies. I further discuss the relevant bylaws below.

19. On August 22, 2017, Mr. Mendelsohn asked the strata to approve renovations planned for October 2017. These included replacing a second-floor door exiting onto the south-facing balcony with a sliding door, and "structural changes to the layout of our master bathroom ensuite".

20. In an August 27, 2017 email, a strata council member, RM, said the strata would conditionally approve the renovations. RM elaborated on these conditions in an

August 30, 2017 email to Mr. Mendelsohn. Mr. Mendelsohn agreed by email the next day and incorporated language from RM's August 30, 2017 email into a written alteration agreement. Mr. Mendelsohn and the strata council members signed it on August 31, 2017.

***Issue #1. Did Mr. Mendelsohn breach the SPA or bylaws by installing the new sliding deck door, and if so, what are the appropriate remedies?***

21. On November 26, 2018, the strata wrote Mr. Mendelsohn a letter advising that the completed south-facing sliding door breached bylaw 5. Bylaw 5 says an owner must obtain the written approval of the strata corporation before making an alteration to a strata lot that involves doors on the exterior of a building. I find bylaw 5 applies to the sliding door at issue. This is because photos show it opens directly from the interior of the strata lot to an exterior second-floor deck. The strata held a hearing about the matter with Mr. Mendelsohn in December 2018 but did not change its view.
22. The strata says the sliding patio door required muntin bars and Mr. Mendelsohn disagrees. For the reasons that follow, I find the strata's position is correct.
23. The signed August 31, 2017 alteration agreement said that the replacement sliding door "will have the exact same appearance maintained from the outside including...muntin bars...so that they match exactly the two adjacent south facing patio doors". A photo shows the 2 adjacent south-facing patio doors of strata lot 4 have muntin bars. So, I find the strata did not approve the sliding door at issue.
24. Mr. Mendelsohn says the old patio door did not have muntin bars. He says he interpreted the strata to mean that he had to keep the sliding door consistent with the old door. I find this is to be an unreasonable interpretation of the alteration agreement. It explicitly says the new door must have muntin bars. So, I find Mr. Mendelsohn breached the alteration agreement and bylaw 5.
25. Mr. Mendelsohn submitted this requirement was unfair, so I considered the law of significant unfairness. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair

actions under CRTA section 123(2), which has the same legal test as cases under SPA section 164. See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. Significantly unfair conduct is conduct that is 1) oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or 2) conduct that is unfairly prejudicial in that it is unjust or inequitable: *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173 at paragraph 88.

26. I find nothing about this situation was significantly unfair. Mr. Mendelsohn installed a door that breached the plain wording of the August 2017 alteration agreement. Given this, I find he could not reasonably expect the strata to approve the door.
27. This leaves the question of the appropriate remedy. In the alteration agreement, Mr. Mendelsohn agreed to sign an indemnity agreement. The parties did not provide a copy of this agreement. Nonetheless, I find Mr. Mendelsohn agreed in general terms to be responsible for the cost of breaching the alteration agreement. So, I find it appropriate to order Mr. Mendelsohn to, within 90 days of this decision and at his expense, replace or fix the south-facing sliding deck door that lacks muntin bars, so that it is consistent with the parties' August 31, 2017 agreement.
28. I find it unnecessary to declare that the door breaches bylaw 5 or the SPA. I also decline to order an architect to inspect the work as I do not find this to be necessary or proportionate. Instead, I order that Mr. Mendelsohn provide the strata access to strata lot 4 to inspect the work on the above-mentioned sliding deck door on 48 hours' written notice.
29. The strata asked for an order for Mr. Mendelsohn to pay fines for the doors. However, it did not say how much the outstanding fines were. I find it would be procedurally unfair to order the payment of fines given that the strata provided Mr. Mendelsohn no notice of how much the fines were in the Dispute Notice. I also find it impractical to order Mr. Mendelsohn to pay fines when the strata has not advised the CRT how much it is seeking. So, I dismiss this part of the claim.

***Issue #2. Did Mr. Mendelsohn breach the SPA or bylaws by installing the shower niche, and if so, what are the appropriate remedies?***

30. In or around October 2017, Mr. Mendelsohn installed a shower niche in the lower bathroom in strata lot 4. Nothing turns on the exact date. Photos show the niche is a wall cavity that forms a recess shelf spanning the length of the shower stall. The niche is in a party wall shared by strata lot 4 and another strata lot referred to as unit 1233. Unit 1233 is on the west side of the wall.
31. On February 21, 2019, the strata wrote to Mr. Mendelsohn. It said he had impermissibly removed a portion of the party wall. The strata then hired Iredale Architecture (Iredale) to inspect the work done. In its August 17, 2019 report, Iredale said it cut an opening into the party wall from unit 1233 to view the back of the niche. Iredale wrote that some of the 2" x 4" studs on the east side had been cut to fit the shelf. Its back was attached to the face of the remaining studs on the west side of the wall. Iredale included photos that matched this description of the work.
32. Iredale concluded that the work breached the Vancouver Building By-law because 1) the wall's fire rating was compromised by the removal of a layer of gypsum board, and 2) the wall's sound rating had been compromised because there was no air gap between the east side studs and the back of the niche. Iredale also said it was possible the work compromised the structural integrity of the party wall.
33. Some months later, on October 28, 2020, the strata wrote a letter to Mr. Mendelsohn advising that it had received a complaint about the shower niche. The strata wrote that it breached bylaw 5.
34. I find that Mr. Mendelsohn had to obtain the strata's approval for the shower niche under bylaw 5. This is because bylaw 5(1) says an owner must obtain the written approval of the strata corporation before making an alteration to a strata lot that involves the structure of the building. Iredale's report shows that the work cut the studs and may have affected the fire and sound protection and the structural integrity of the wall. I find that this work therefore affected the structure of the building.



35. I find that Mr. Mendelsohn did not have the strata's approval for the shower niche. The parties' August 31, 2017 alteration agreement mentions "structural changes" and that the "common strata walls" in the bathroom "are being updated". I find the shower niche went beyond updates because it involved cutting studs and attaching the shelf to other studs. Mr. Mendelsohn also provided an August 22, 2017 engineer's letter to the strata at the time. It outlined the work to be done but did not mention the shower niche. So, I find the shower niche was not part of the approved changes in the August 31, 2017 alteration agreement. I find the shower niche breaches bylaw 5.
36. Mr. Mendelsohn provided a June 10, 2021 letter from his contractor and a June 23, 2021 letter from a structural engineer. In both letters the writers say the work did not compromise the structural integrity of the shared wall. I find the work nonetheless involved altering the structure of the building, even if it did not create any danger. As such, I find that Mr. Mendelsohn was obligated to seek permission for it first under bylaw 5.
37. To the extent that Mr. Mendelsohn alleges significant unfairness by the strata I find this unproven. Mr. Mendelsohn failed to mention the shower niche to the strata so I find he could not reasonably expect the strata to approve it.
38. This leaves the appropriate remedy. I order Mr. Mendelsohn to, within 90 days of this decision and at his expense, remove the shower niche and restore the affected party wall to its original condition. I also order that Mr. Mendelsohn provide the strata access to strata lot 4 to inspect the work on the wall affected by the shower niche on 48 hours' written notice.
39. I also order that, within 30 days of completing this work, Mr. Mendelsohn give the strata written confirmation from Iredale or another contractor of the strata's choice that the completed work provides reasonable fire and sound protection and structural strength.

40. Similar to before, I find it unnecessary to declare that the shower niche breaches bylaw 5 or the SPA. The strata also asked for orders to inspect the party walls located in the upper west bathroom and lower north bedroom. I do not find it proven that this is necessary at this time.
41. The strata did not say how much it fined Mr. Mendelsohn for the shower niche. So, for the same reasons that I dismissed the strata's request for an order of payment of fines for the doors, I also dismiss the strata's request for an order that Mr. Mendelsohn pay fines for the shower niche.

***Issue #3. Must the strata reimburse Mr. Mendelsohn \$300 for fines paid?***

42. Mr. Mendelsohn seeks \$300 as reimbursement for bylaw fines. His submissions indicate \$150 of these were for noise complaints and \$150 were for the hot tub. I will first consider the fines about the hot tub.
43. On August 10, 2020, the strata sent Mr. Mendelsohn a letter advising that his hot tub breached bylaws 3 and 6. Bylaw 3 says an owner, tenant, or occupant must not use a strata lot in a way that causes a nuisance or unreasonable noise. Bylaw 6 says that an owner must obtain the written approval of the strata corporation before making an alteration to common property, including limited common property, or common assets.
44. A statement of account shows the strata applied a \$50 fine to Mr. Mendelsohn's strata lot account on the same date of the August 10, 2020 letter. Similarly, on December 21, 2020, the strata sent Mr. Mendelsohn another letter to advise that it had levied a \$50 fine because he had not yet removed the hot tub. It also levied an additional \$50 fine for noise generated by the hot tub. The statement of account shows the strata applied \$100 in fines to Mr. Mendelsohn's strata lot on that date.
45. Mr. Mendelsohn says the strata did not comply with the procedural requirements of SPA section 135(1) in imposing the fines. For the reasons that follow, I agree. SPA section 135(1) says a strata corporation must not impose a fine against a person for contravening a bylaw until they have had a reasonable opportunity to answer the

complaint. In *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the BC Court of Appeal found that strict compliance with SPA section 135 is required before a strata corporation can impose fines.

46. Mr. Mendelsohn provided a statement of account that shows the strata imposed its fines on August 10 and December 21, 2020, before he could answer the complaints. Given this, I find that the strata must reimburse the hot tub-related fines of \$150.
47. I next consider the noise complaints. The strata sent Mr. Mendelsohn letters dated January 22, February 11, and March 9, 2021 about noise, and in particular noise from his kids. In each letter the strata said the noise breached bylaw 3 and warned it could impose fines of \$50.
48. Similar to before, Mr. Mendelsohn's statement of account shows that the strata imposed \$50 fines on the same date it sent each of the 3 letters. So, I find the strata imposed these fines contrary to SPA section 135(1). I order the strata to reimburse the noise-related fines of \$150.

***Issue #4. Must the strata reimburse Mr. Mendelsohn any strata fees?***

49. Under SPA sections 167(2), 171(5), and 189.4, all owners except any being sued must contribute to the expense of the strata corporation suing as representative of all owners. Further, an owner suing the strata corporation is not required to contribute to the cost of defending the suit.
50. The strata admits it used its operating fund to pay a January 13, 2021 invoice for \$1,770.72 in legal fees in connection with this dispute. Mr. Mendelsohn says the strata should reimburse him \$316.93 as his share of strata fees used to pay the invoice. I find it unnecessary to make this order. The strata acknowledges Mr. Mendelsohn is not required to contribute to paying the invoice. At the May 12, 2021 special general meeting, the owners passed a  $\frac{3}{4}$  vote resolution to raise a special levy of \$1,770.72 to pay the legal fees. A schedule shows the strata did not apportion any of this amount to strata lot 4. So, I find it unnecessary to order reimbursement.

51. Mr. Mendelsohn also requested an order that the strata comply with SPA sections 169 and 171. I find such an order unnecessary because the strata must already comply with the SPA.
52. In submissions, Mr. Mendelsohn requested a statement of account confirming that all of the strata's legal expenses were paid by the other owners. I decline to order the strata to do this as Mr. Mendelsohn requested this remedy late in the dispute resolution process. I note however, that under SPA section 35, the strata must prepare books of account showing money received and spent and the reason for the receipt or expenditure. SPA section 36(1)(a) says that on receiving a request, the strata corporation must make the records and documents referred to in section 35 available for inspection by, and provide copies of them, to an owner. I leave that for the parties to consider.

## **CRT FEES, EXPENSES AND INTEREST**

53. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the strata has been largely successful as it proved its primary claims about the door and shower niche. I therefore order Mr. Mendelsohn to reimburse the strata for CRT fees of \$225. The strata claimed no specific dispute-related expenses, so I order none. I dismiss Mr. Mendelsohn's claims for reimbursement.
54. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Mendelsohn is entitled to prejudgment interest on the fines paid calculated from the dates the strata imposed those fines. This equals \$1.30.
55. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Mendelsohn.

## ORDERS

56. I order that within 90 days of this decision and at his expense, Mr. Mendelsohn
- a. replace or fix the south-facing sliding deck door of strata lot 4 that lacks muntin bars, so that it is consistent with the parties' August 31, 2017 alteration agreement, and
  - b. remove the shower niche in strata lot 4 and restore the affected party wall to its original condition.
57. I order that Mr. Mendelsohn provide the strata access to strata lot 4 to inspect the work on the above-mentioned sliding deck door, shower niche, and party wall on 48 hours' written notice.
58. I order that within 30 days of completing the work ordered above on the shower niche and party wall, Mr. Mendelsohn give the strata written confirmation from Iredale or another contractor of the strata's choice that the completed party wall work provides reasonable fire and sound protection and structural strength.
59. I order that within 14 days of the date of this order, the strata reimburse Mr. Mendelsohn a total of \$76.30, broken down as follows:
- a. \$300 for bylaw fines less \$225 in CRT fees awarded to the strata, and
  - b. \$1.30 in prejudgment interest under the *Court Order Interest Act*.
60. I dismiss the remaining claims and counterclaims of the strata and Mr. Mendelsohn.
61. Mr. Mendelsohn is entitled to post-judgment interest under the *Court Order Interest Act*.

62. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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David Jiang, Tribunal Member